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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

Epic Games, Inc. v. Google LLC et al., Case
No. 3:20-cv-05671-JD

Case No: 3:21-md-02981-JD

**NON-PARTY SUPERCCELL OY'S
REQUEST TO SEAL COURTROOM
AND PORTION OF EXHIBIT 5674, P. 17**

Judge: Hon. James Donato

Pursuant to Civil Local Rule 79-5 and the Court's Order, Dkt. No. 727, Non-Party Supercell Oy ("Supercell") respectfully requests that the Court treat as sealed Supercell's non-public, highly confidential information on a portion of page 17 of Trial Exhibit 5674,¹ either by sealing the courtroom during the introduction of, and testimony about, the information or at minimum by (1) publishing such information to the jury and Court alone and not to the courtroom gallery or general public, and (2) preventing statement of the highly confidential information during the course of trial. Supercell also requests that, to the extent Trial Exhibit 5674 is filed in this action, that the portion of page 17 identified be filed under seal.

As an initial matter, Supercell was again not given reasonable notice of the intended use of Trial Exhibit 5674, as it was not regarding Exhibit 1525 earlier this week. *See* Dkt. Nos. 743, 757 ¶ 3. Supercell was provided notice by email that Trial Exhibit 5674 may be used on November 13 in open court only well after close of business on Friday November 10 (and in the early morning hours of Saturday, November 11 in Helsinki, where Supercell's relevant employees work). McHale Decl. ¶ 4. This left Supercell's counsel less than 24 hours over a weekend to try to confer with Supercell to review and respond to the potential disclosure of its highly confidential information, depriving Supercell and its counsel of any meaningful ability to meet and confer with the parties to avoid having to file this request, and burdening the Court in turn. *Id.* Supercell objects to these ongoing last-minute disclosures, which impose extreme undue burden on Supercell, a non-party to this case, particularly given that Supercell expects the parties have known the universe of potential trial exhibits—including those that contain Supercell highly confidential information—for some time.

In all events, compelling reasons exist to seal Supercell's highly confidential and proprietary business information on page 17 of Trial Exhibit 5674. Specifically: (i) Supercell has legitimate interests in maintaining the confidentiality of its sensitive business information; (ii)

¹ Supercell was provided only an excerpt of page 17 of Trial Exhibit 5674 and has relied on representations of counsel for the parties that the excerpt constitutes the full extent of Supercell's highly confidential information in Exhibit 5674. To the extent Supercell's highly confidential information is also located in other portions of Exhibit 5674, Supercell reserves all rights with respect to that information and likewise asks that it remain sealed consistent with this request.

1 revealing this information publicly would provide an advantage to Supercell's competitors and
 2 Defendants' competitors adverse to Supercell, or otherwise harm Supercell's business; and (iii)
 3 there is no less restrictive alternative sufficient to protect Supercell's legitimate interests than the
 4 sealing proposed by Supercell in this request. *See* Civ. L.R. 79-5(c)(1). Moreover, Supercell has
 5 filed three other statements and declarations in this matter seeking sealing of its similar and
 6 analogous highly confidential and proprietary business information. Dkt. Nos. 562, 617, 743.
 7 Supercell maintains that those materials and other Supercell highly confidential materials used at
 8 trial should remain sealed and not disclosed to the public, even if the tight trial turnaround
 9 schedule and the parties' unreasonably late notifications severely inhibit Supercell's ability to
 10 submit sealing requests by the Court's deadlines. It would be unjust to subject Supercell, a non-
 11 party to this action, to the severe prejudice and competitive injury of having its highly confidential
 12 information revealed in these circumstances. Supercell maintains that the parties should have
 13 adopted a procedure to account for the trial schedule and provided Supercell (and other non-
 14 parties) sufficient notice to protect highly confidential information—information it seems the
 15 parties surely knew would be at issue in the trial before it commenced. *See, e.g.*, Dkt. No. 248 at
 16 Sec. 2.2, 4.6 (requiring parties to notify non-parties two business days after the exchange of trial
 17 exhibit lists of any potential use at trial of non-party confidential information).

18 A review of the excerpted portion of page 17 of Trial Exhibit 5674 that Supercell received
 19 shows that it contains and reflects Supercell's highly confidential and commercially sensitive
 20 information relating to Supercell's business and customer game play and purchase data and
 21 analytics, that Supercell keeps confidential in the ordinary course of its business and under
 22 contract with Google. *See* Dkt. Nos. 757 ¶ 4, 562-1, 617-1.² Supercell views this information as
 23 highly confidential and commercially sensitive business information, has not made it public (nor
 24 is it public, to Supercell's knowledge), and the disclosure of this information is likely to result in
 25 substantial competitive or commercial disadvantage to Supercell. If these portions of the Trial
 26

27 ² Supercell submits this request to preserve its ability to protect its highly confidential information
 28 in compliance with the Court's deadline. Should the Court require further support for this request,
 Supercell is prepared to promptly submit a further client declaration.

1 Exhibit were to be made public, Defendants’ competitors (for example, platforms operated by
2 third parties competitive with Defendants where Supercell offers its games) could glean
3 information about Supercell’s customers and its business relationship with Defendants and use
4 this information in negotiations with Supercell to gain a competitive advantage at Supercell’s
5 expense. Disclosure of this information would also likely harm Supercell by harming its
6 bargaining position with third party platforms, and could give its competitors the ability to
7 undercut Supercell and unfairly win additional business.

8 The Federal Rules contemplate sealing information like the above that reflects
9 confidential business development practices and competitively sensitive information, and courts
10 routinely seal such information. *See, e.g.*, Fed. R. Civ. P. 26(c)(1)(G) (a court may order that
11 “trade secret or other confidential research, development, or commercial information not be
12 revealed”); *Space Data Corp. v. Alphabet Inc.*, No. 16-CV-03260-BLF, 2019 WL 8012582, at *1
13 (N.D. Cal. July 17, 2019) (sealing information including confidential business development
14 practices, competitively sensitive information, and sensitive information pertaining to third party
15 partners, whose disclosure could expose the party to competitive harm). As a non-party to this
16 litigation, Supercell’s interests in safeguarding its highly confidential information are particularly
17 strong. *See In re Adobe Systems, Inc. Sec. Litigation*, 141 F.R.D. 155, 161-62 (N.D. Cal. 1992).
18 Supercell’s request to seal its information is narrowly tailored because it proposes to seal only the
19 information necessary to protect Supercell’s legitimate interests, namely that identified above.

20 For these reasons, Supercell respectfully requests that the Court grant Supercell’s request
21 that the portion of page 17 of Trial Exhibit 5674 containing Supercell’s highly confidential
22 information designated “Non-Party Highly Confidential – Outside Counsel Eyes Only” be treated
23 as sealed, either by sealing the courtroom for their introduction or by displaying them only to the
24 Court and jury and preventing statements of the information during trial.

Dated: November 11, 2023

Respectfully submitted,

/s/ Ciara McHale

Ciara McHale

Attorneys for Non-Party
Supercell Oy